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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Phoenix Environmental Design, Inc.

File: B-411678

Date: September 28, 2015

C. Chad Gill for the protester.

Elyse M. Griffiths, Esq., Department of Veterans Affairs, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency's decision to conduct limited competition for urgently needed landscaping supplies was unobjectionable where agency reasonably limited competition to four vendors that had recently submitted quotations for the items under a cancelled solicitation.

DECISION

Phoenix Environmental Design, Inc., of Newman Lake, Washington, protests the issuance of a purchase order (No. VA-786-15-P-0884) to Green Wave Supply and Logistics, Inc., of Buena Park, California, by the Department of Veterans Affairs (VA), National Cemetery Administration, for landscaping supplies needed for the treatment of deteriorating turf at the Florida National Cemetery in Bushnell, Florida. Phoenix alleges that the purchase order resulted from an improper sole-source award to Green Wave.

We deny the protest.

On April 10, 2015, the agency solicited quotations for the delivery of various quantities of fertilizer, pesticides, fungicides, and pre-emergents for use at the Florida National Cemetery. The solicitation provided for a delivery schedule with four installments extending over the summer months through September 30. Phoenix protested the terms of this solicitation, however, which had been set aside for service-disabled, veteran-owned small businesses, arguing that it failed to provide sufficient information to permit quotations of commercially available items.

In response to the protest, the agency cancelled the solicitation and our Office dismissed the protest as academic. Phoenix Environmental Design, Inc., B-411381.2, June 10, 2015. Subsequently, on June 18, the agency issued a revised solicitation for the requirements sought under the cancelled solicitation.¹

Prior to the issuance of the revised solicitation, the agency identified an urgent need for a limited delivery of landscaping supplies to treat deteriorating turf at the cemetery. In connection with this need, on June 4, the agency prepared a “requisition” request for an interim purchase of limited quantities of several items. Agency Report (AR), Exh. 5 at 5-6. Based on this request, the contracting officer decided to conduct a limited competition for the needed supplies pursuant to Federal Acquisition Regulation (FAR) § 6.302-2(c)(2), which authorizes the use of other than full and open competition due to unusual and compelling urgency. AR, Legal Memorandum at 1; Contracting Officer’s (CO) Statement at 1. According to the contracting officer, on June 8, he requested and received verbal quotations from four vendors that had submitted quotations in response to the April 10 cancelled solicitation. Id. Green Wave quoted the lowest price. Id.

On June 8, the contracting officer signed a Justification and Approval (J&A) in support of an award to Green Wave under the authority of FAR § 6.302-2(c)(2) for the use of other than full and open competition due to urgent and compelling circumstances. As justification of the agency’s decision to obtain other than full and open competition, the J&A indicated that the Florida National Cemetery has over 250 acres of turf with an estimated value of over \$13 million, which, according to the agency was in “dire need of treatment.” AR, Exh. 5 at 1. As explained in the J&A, delivery of the necessary landscape supplies had been delayed due to the protest filed by Phoenix in connection with the April 10 solicitation and that without procuring the necessary supplies “the turf will be los[t] and require replacement.” Id.

After obtaining the necessary approvals for the J&A, the agency issued the purchase order to Green Wave on June 17 in the amount of \$43,168.50 and posted notice of the award to Green Wave on the Federal Procurement Database System. In this notice, however, the agency mistakenly referenced the authority of FAR § 6.302-5(a)(2)(i), which provides that full and open competition need not be provided for when a statute expressly authorizes that the acquisition be made through another agency or a specified source, and indicated that the requirement had not been competed but had been issued on a sole-source basis. AR, Exh. 3, Notice of Award at 2-3. Phoenix filed the subject protest on June 21 challenging what it believed to be a sole-source award to Green Wave.

¹ At the time of this decision, the revised procurement is ongoing and not a subject of this protest.

Subsequent to the filing of the protest by Phoenix, the agency corrected the award notice on June 25 to delete the reference to FAR § 6.302-5(a)(2)(i) and instead reference the provisions of FAR § 6.302-2(c)(2), which pertain to urgent and compelling circumstances matching the authority cited in the J&A document signed by the contracting officer on June 8 in support of the purchase order. AR, Exh. 3, Corrected Award Notice at 2-3. In responding to the corrected award notice, Phoenix, however, pointed out that the award notice still indicated that a single quotation had been received. Then, on June 30, the agency further corrected the award notice to reference the limited competition that had been held on June 8. AR, Exh. 4, Second Corrected Award Notice at 2-3.

In its report responding to the protest, the agency provided the protester and our Office with a copy of the J&A signed by the contracting officer on June 8, with the cemetery's estimate documentation attached. The J&A document, in a section providing a description of the supplies, refers to the procurement as a "sole source acquisition." AR, Exh. 5. Further, in response to an inquiry by this office seeking clarification of the contracting officer's role in preparing the June 4 requisition request, the contracting officer again referred to the award to Green Wave as a "sole source award," notwithstanding that the signed statement also indicated that the contracting officer solicited four vendors in connection with the requirement.² The protester contends that the use of the phrase "sole source" in the J&A, and by the contracting officer in a clarification of the cemetery's estimate documentation, proves that the agency in fact limited the competition to Green Wave for a sole-source award without obtaining quotations from other vendors.³ We find that Phoenix's challenge provides an insufficient basis to sustain its protest.

² Our Office asked the contracting officer to clarify the June 4 date of the requisition form in light of the fact that it identified an estimated price identical to the price subsequently quoted by Green Wave on June 8. In response, the contracting officer simply represented that he did not complete the June 4 requisition; rather, it was prepared by the Florida National Cemetery. Contracting Officer's Supplemental Statement, Sept. 9, 2015. Although we find this coincidence somewhat peculiar, we recognize that the agency had Green Wave's and others' recent quotations from the cancelled solicitation to consider in formulating its estimate and we do not believe it demonstrates that the agency has been other than truthful in representing that the contracting officer solicited quotes from four vendors on June 8.

³ Phoenix raised additional contentions in its protest but failed to discuss them in its comments, e.g., regarding the agency's failure to synopsise the requirement. Consequently, we consider them abandoned. See The Big Picture Company, Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218 at 5.

As a general matter, an agency may use other than competitive procedures to procure goods or services where its needs are of such an usual and compelling urgency that the government would be seriously injured if the agency is not permitted to limit the number of sources from which it solicits proposals. 41 U.S.C. § 253(c)(2). When citing an unusual and compelling urgency, the agency is required to request offers from “as many potential sources as is practical under the circumstances.” 41 U.S.C. § 253(e); FAR § 6.302-2(c). An agency using the urgency exception may restrict competition to the firms it reasonably believes can perform the work in the available time. RSO, Inc., B-250785.2, B-250785.3, Feb. 24, 1993, 93-1 CPD ¶ 489. We will not object to the agency’s determination to limit the competition based on an unusual and compelling urgency unless the agency’s determination lacks a reasonable basis. Jay Dee Militarywear, Inc., B-243437, July 31, 1991, 91-2 CPD ¶ 105, recon. denied, B-243437.2, Oct. 24, 1991, 91-2 CPD ¶ 366.

Our review of the record supports the reasonableness of the agency’s determination, consistent with FAR § 6.302-2(c), that urgent and compelling circumstances existed in terms of the costly deterioration of the turf at Florida National Cemetery and that the agency acted reasonably by limiting competition to four vendors that submitted quotes in response to the previously cancelled April 10 solicitation. To the extent the protester questions whether the agency in fact sought competition for the limited procurement, in its legal memorandum in support of the agency report, and in two signed statements by the contracting officer, the agency reports that on June 8 four vendors were solicited and provided verbal quotations. While the record also indicates that the agency has referred to the acquisition as a “sole source,” i.e., in the initial award announcement, the J&A and the contracting officer’s clarification statement, we view such references to be administrative irregularities in light of the fact that the agency has clearly represented to our Office that a limited competition was held.

Moreover, the protester provides no basis for our Office to conclude that the agency acted unreasonably by limiting the competition to four vendors which had previously submitted quotes in response to the cancelled solicitation. Based on their prior quotes, the agency was able to conclude that the vendors had a demonstrated interest and capability to meet the limited immediate requirements of this urgent buy at reasonable prices. In contrast, since Phoenix did not submit a quote in response to the April 10 solicitation, the agency was unsure as to Phoenix’s capability. Accordingly, Phoenix was not included in the limited competition. Id. In our view,

the agency's actions reasonably satisfied the requirement of FAR § 6.302-2(c) to solicit as many potential sources as practical under the circumstances to meet its urgent requirements.

The protest is denied.

Susan A. Poling
General Counsel